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III. Remarks

A. Rejection under 35 U.S.C. § 103(a)

1. Claims 1-10, 12-25 and 27-35

The Action rejects Claims 1-10, 12-25 and 27-35 as being obvious from U.S. Patent No. 6,480,836 to Colby et al. Reconsideration and withdrawal of this rejection are respectfully requested in view of the foregoing amendments and the following arguments.

As set forth in the previous Response, independent Claim 1 was previously amended to recite the following steps: (i) calculating values of an index for lottery retailers in said subset, said index representing a normalized comparison of sales performance of each of the lottery retailers in said subset relative to said subset of retailers; and (ii) providing said values for display by said computer to said user. Independent Claims 15 and 16 recite similar features. In one example described in Paragraph 20, the index is a normalized percentage comparing the individual lottery retailer's sales relative to the average retailer in the displayed group. The index is not merely raw, gross sales of an individual lottery retailer, but rather a tool for comparison of the individual lottery retailers to a selected group of lottery retailers.

A retailer's index value with respect to a first group of lottery retailers may be different than the retailer's index value with respect to a second group of lottery retailers, as the value for the retailer is calculated (per Claim 1) with respect to the subset of retailers that satisfies the search criteria. Hence, the index value tool is a valuable tool when combined with the recited search methodology, which is capable of identifying different groups of retailers dependent upon the received criteria.

These features were previously recited in, for example, dependent Claim 4 as previously pending and then amended into Claim 1. In rejecting this claim in the previous Action, the Examiner concluded that Colby et al. teaches a table containing values of an index comparing sales performance because reports comparing sales performance can be generated. In response

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to Applicants' arguments set forth in the previous response, the Examiner withdrew this rejection and now substitutes the following reasoning:

Colby et al. does not explicitly teach calculating values of an index for retailers in the subset, said index representing a normalized comparison of sales performance of each of the lottery retailers in the subset relative to the subset of retailers and providing those values for display by the computer. However, it is old and well know to normalize data, specifically sales data, since it is more meaningful to compare a percentage of sales rather than the absolute volume of sales. This normalization will give you a proportion of total sales for the entire subset that is easier to understand for comparison purposes. By normalizing the data of Colby et al the user can make easier comparison between retailer sales.

Applicants submit that the Examiner has not provided any support for the statement that "it is old and well know to normalize data, specifically sales data, since it is more meaningful to compare a percentage of sales rather than the absolute volume of sales . . ."

Patent Office Rule 104(c)(2) (37 C.F.R. § 104(c)(2)) requires that "in rejecting claims for . . . obviousness, the examiner must cite the best references at his or her command" (emphasis added). In making the statement, quoted above, about "normalizing" data in the art, specifically sales data, the Office failed to cite any prior art. Accordingly, it appears that the Examiner is relying upon facts within the Examiner's knowledge, as provided by 37 C.F.R. § 104(c)(3). Applicants therefore respectfully request an Examiner's affidavit, pursuant to 37 C.F.R. § 104(d)(2)1 containing the following information:

(a) all facts within the personal knowledge of the Examiner at the time of the invention regarding how (i) it is old and well know to normalize data, specifically sales data,

1 "When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subjected to contradiction or explanation by the affidavits of the applicant and other persons." 37 C.F.R. 1.104(d)(2)

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since it is more meaningful to compare a percentage of sales rather than the absolute volume of sales, (ii) how this normalization will give you a proportion of total sales for the entire subset that is easier to understand for comparison purposes, and (iii) how normalizing the data can make easier comparison between retailer sales, as set forth in the rejection of Claims 1-29;

(b) all facts within the personal knowledge of the Examiner at the time of the invention regarding how the values of indexes, known to the Examiner, representing normalized comparisons of sales performance were calculated; and

(c) all facts within the personal knowledge of the Examiner at the time of the invention showing a suggestion or motivation to calculate and provide the values of an index as described above in connection with (i) lottery retailers and (ii) lottery retailers identified in "a table for display by a computer, said table containing a listing of a subset of lottery retailers" where the subset is identified from "receiving from a user a query of data representing lottery ticket sales for a plurality of lottery retailers based on at least one criterion from a predetermined list of criteria.

Without cited prior art or Examiner affidavit testimony, supporting the conclusory contentions stated in the Office Action regarding the rejection of Claims 1-29, Applicants are deprived of their right to know the relevant factual bases of this obviousness rejection. As expressly provided in Rule 104(d)(2), any affidavit submitted by the Examiner "shall be subject to contradiction or explanation by the affidavits of the applicant and other persons." Applicants reserve the right to submit such controverting and/or explanatory testimony, upon receipt of the information requested above.

Still further, even assuming for arguments' sake that there is art relating to normalization of sales data, the Examiner has not shown a suggestion or motivation in the art to apply these teaching (i) to lottery retailer sales data, nor (ii) to lottery retailers that are identified by receiving from a user a query of data representing lottery ticket sales for a plurality of lottery

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retailers, nor (iii) in connection with providing a table for display by a computer where the table contains a listing of a subset of lottery retailers from said plurality of lottery retailers that meet the at least one criterion of the query, and where the table also contains data representing lottery ticket sales associated with said subset of retailers. It is respectfully submitted that any such suggestion or motivation impermissibly relies on hindsight review of Applicants' disclosure.

For at least these reasons, reconsideration and withdrawal of the rejection of Claims 1-29 are respectfully requested for at least these reasons.

Reconsideration and withdrawal of the finality of the rejection of these claims are also respectfully requested.

2. Claims 11 and 26

The Action rejects Claims 11 and 26 and being obvious from Colby et al. in view of Johnson, "Map Out Your Profits." Claims 11 and 26 depend from Claims 1 and 16, respectively, and are, therefore, allowable for at least the reasons set forth above in connection therewith. Reconsideration and withdrawal of the rejection of these claims are respectfully requested.

3. Claims 30-35

Independent Claim 30 is directed to a method where a table is provided for display including values of an index that compares sales performance of each of the lottery retailers in the table. At least one criterion is received from a user for identifying a subset of lottery retailers from the plurality of lottery retailers in the table. Values of the index are calculated for the subset of lottery retailers, and a modified table is provided for display having the calculated values for the subset of lottery retailers.

As discussed above in, it is submitted that the Examiner has conceded that Colby et al. does not teach or suggest values of an index in a table that compares sales performance of the lottery retailers in the table. Further, it is submitted that the Examiner concedes that Colby et al. does not teach or suggest receiving a query that would identify a subset of retailers from the

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retailers in the table, calculating values of the index for the subset and providing a modified table for the subset of retailers displaying the calculated values.

The method allows users to parse a tabular display of lottery retailers into a subset and display index values calculated specific to the subset of lottery retailers for comparison.

In rejecting Claims 30 and 31, the Examiner again states that:

However, it is old and well known to normalize data, specifically sales data, since it is more meaningful to compare a percentage of sales rather than the absolute volume of sales. This normalization will give you a proportion of the total sales for the entire subset that is easier to understand for comparison purposes. By normalizing the data of Colby et al the user can make easier comparison between retailer sales.

As set forth above, Applicants submit again that the Examiner has not provided any support for the statement that "it is old and well know to normalize data, specifically sales data, since it is more meaningful to compare a percentage of sales rather than the absolute volume of sales . . ."

Patent Office Rule 104(c)(2) (37 C.F.R. § 104(c)(2)) requires that "in rejecting claims for . . . obviousness, the examiner must cite the best references at his or her command" (emphasis added). In making the statement, quoted above, about "normalizing" data in the art, specifically sales data, the Office failed to cite any prior art. Accordingly, it appears that the Examiner is relying upon facts within the Examiner's knowledge, as provided by 37 C.F.R. § 104(c)(3). As set forth above, Applicants therefore respectfully request an Examiner's affidavit, pursuant to 37 C.F.R. § 104(d)(2) containing information in support of the Examiner's statements, specifically:

(a) all facts within the personal knowledge of the Examiner at the time of the invention regarding how (i) it is old and well know to normalize data, specifically sales data, since it is more meaningful to compare a percentage of sales rather than the absolute volume of

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sales, (ii) how this normalization will give you a proportion of total sales for the entire subset that is easier to understand for comparison purposes, and (iii) how normalizing the data can make easier comparison between retailer sales as set forth in the rejection of Claims 30-35;

(b) all facts within the personal knowledge of the Examiner at the time of the invention regarding how the values of indexes, known to the Examiner, that compared sales performance of retailers listed in a table were calculated;

(c) all facts within the personal knowledge of the Examiner at the time of the invention regarding how the values of indexes, known to the Examiner, that compared sales performance of subsets of retailers listed in a table were calculated.

(d) all facts within the personal knowledge of the Examiner at the time of the invention showing a suggestion or motivation to calculate and provide the values of an index as described above in connection with (i) lottery retailers, (ii) lottery retailers identified in "a table for display by a computer, said table containing data representing lottery ticket sales for a plurality of lottery retailers", and (iii) a modified table "containing a listing of said subset of lottery retailers from said plurality of lottery retailers" where the subset is identified based on at least one criterion received from a user.

Still further, even assuming for arguments' sake that there is art relating to normalization of sales data, the Examiner has not shown a suggestion or motivation in the art to apply these teachings (i) to lottery retailer sales data, nor (ii) for lottery retailers, nor (iii) for providing the normalized index values in connection with a table of lottery retailers and lottery ticket sales, nor (iv) in connection with a modified table of a subset of lottery retailer in response to a query from a user. It is respectfully submitted that any such suggestion or motivation impermissibly relies on hindsight review of Applicants' disclosure.

For at least these reasons, reconsideration and withdrawal of the rejection of Claim 30 and 31 are respectfully requested.

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Claims 32-35 recite features that parallel those of Claims 30 and 31. Accordingly, for at least the reasons set forth above in connection with Claims 30 and 31, reconsideration and withdrawal of the rejection of these claims are respectfully requested.

Reconsideration and withdrawal of the finality of the rejection of these claims are also respectfully requested.

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IV. Conclusion

In view of the foregoing remarks and amendments, Applicant(s) submit that this application is in condition for allowance at an early date, which action is earnestly solicited.

The Commissioner for Patents is hereby authorized to charge any additional fees or credit any excess payment that may be associated with this communication to deposit account 04-1679.

Respectfully submitted,

Dated:

1-19-06


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